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A STATUTE OF LIMITATIONS FOR TAXES.

Few state-wide questions have so exercised the people of Virginia in the last few years as the question of the collection of omitted taxes. Nor has any question seemed to carry with it so little discussion as to what is the authority insisting upon the course pursued. The effect has been deplored by business men throughout the Commonwealth, who allege that capital has, through the recent efforts to bulge the public purse by the collection of such taxes, been driven from the State.

But before condemning any particular executive officers or set of officers or legislators, it would seem advisable to examine the question as to just what it is that requires the collection of taxes thus omitted. It is therefore the purpose of this article to discuss three questions:

1. What is the authority for requiring the collection of omitted taxes?
2. Is such collection a wise policy?
3. If unwise, what is the proper remedy?

These questions will be treated in their order.

I.

What is the authority for requiring the collection of omitted taxes?

Prior to 1914, whatever agitation there may have been on the subject of taxation was directed more or less blindly toward the raising of enough revenue for the support of the government. In 1914, however, acting in consequence of a united public demand that taxes be more equal and uniform to be effectuated by a better assessment of property, the discovery of property previously hidden and more up-to-date machinery to assess and collect the taxes on the property found, the Legislature provided for the appointment of a Joint Committee on

Tax Revision to report to a special session of the General Assembly "what changes, if any, shall be made in existing statutes for the assessment and collection of taxes and other public revenues, appropriating and expending the revenue so as to make them more equitable, just and fair in their operation or better adapted to the purposes of raising the revenue necessary for the support of the government."¹ In November of that year the Committee so appointed filed a 300-page report showing the inequalities and inefficiency of the tax system of Virginia, and making suggestions for curing defects. Accordingly, the Governor called an extra legislative session for 1915, for the purpose primarily of making a complete revision of tax legislation.

At the session thus held the State Tax Board was created with broad supervisory powers for the purpose of equalizing assessments and of uncovering taxes improperly omitted.² The same act which created this board made provision for the appointment of local boards of review for the various counties and cities with duties as to their respective localities similar to those of the State Tax Board. Besides these two boards, a third active auxiliary for the purposes mentioned was the imposition upon examiners of records, of whom there were thirty-one in the Commonwealth, or one for each judicial circuit, of duties and extensive powers in uncovering property for tax purposes.³ Their compensation was fixed on a commission basis and they at once set out to uncover for the first time in Virginia what had almost habitually been omitted because of lax enforcement for many years back. At once the investigations of these officials became so burdensome that the State Tax Board passed a resolution requiring that during 1915 they confine their activities to years beginning with 1912.

In 1916, it seemed to be the consensus of opinion that there must be some limit to what was deemed a tax inquisition. It appeared to be advisable to limit the omitted years by forbidding the levy of taxes for any years prior to 1912. This was

1. Acts 1914, ch. 212.

2. Acts 1915, ch. 116.

3. Va. Code, 1904, § 3326b; Acts 1915, ch. 116.

in fact done as to city, town, county and district levies.⁴ But when the question was presented in regard to taxes due to the State as distinguished from local levies, it was obvious that there existed a constitutional provision which appeared to preclude such an act; that section reads as follows:

"After this Constitution shall be in force, no statute of limitations shall run against any claim of the State for taxes upon any property; nor shall the failure to assess property for taxation defeat a subsequent assessment for and collection of taxes for any preceding year or years, unless such property shall have passed to a bona fide purchaser for value, without notice; in which latter case the property shall be assessed for taxation against such purchaser from the date of his purchase."⁵

Therefore, it is apparent that the campaign for the collection of omitted taxes back as far as 1902 results not from the choice of the Legislature, nor from that of administrative officers, but flows from the above-quoted section of the Constitution, to enforce which it is the sworn duty of the State Tax Board, the Legislature, and all tax officials.

II.

Assuming that such a constitutional section requires the collection of omitted taxes at least as far back as 1902, is such collection a wise policy?

In discussing this question, let it be clear at the outset that no reputable citizen has any sympathy for the tax-dodger. He is not merely dishonest, but fails to pay for the protection and privileges he gets and for which contribution is asked at the request of those to whom is delegated the task of saying what his contribution shall be. He who steals from the individual at least does not violate a confidence reposed, but he who filches revenue from the State takes advantage of a trust or confidence which the nature of tax collection of necessity requires. Nothing can be said in his favor, nor in favor of those who with good intentions fail to use due care in the ascertainment of what taxes are owed.

4. Va. Code, 1904, § 508.

5. Va. Constitution, 1902, § 174.

But this question must be approached from another angle. None of us have a high regard for those who, owing debts, take advantage of the bankruptcy act, nor for those who, while admitting the existence of a valid debt, shield themselves behind the statute of limitations, yet all of us favor the policy of such legislation, because its aim in the case of the bankruptcy laws is to enable many unfortunates to turn over a new leaf and to wipe the slate clean, and because, in the case of statutes of limitations, to set at rest claims which from the nature of the case due to lapse of time would be difficult to disprove or to quiet title generally. If it be good policy as between individuals, surely it is none the less so as between individual and State. As was stated by our Court of Appeals:

"Statutes of limitation are to be enforced by the courts like any other statute. They are statutes of repose, and are dictated by a wise policy founded upon the presumption against him, who has unreasonably delayed the assertion of his demand, and in favor of him who has long exercised the dominion of owner."⁶

If, therefore, these statutes are statutes of repose, they are enacted because the benefit to those owing debts outweighs the detriment to those to whom debts are owed. If the policy is for the benefit of the reposing, is it material who is on the other side, whether it be an individual or the State? True it is that an old maxim is: *Nullum tempus occurrit regi*. The reasons generally assigned as the basis for this doctrine that statutes of limitation are inapplicable to the enforcement of the rights of the State are: First, that the king or sovereign is so busied for the public welfare that he has not the leisure to assert his rights within the time required of his subjects. At best, this is a relic of the time of unorganized one-man government. But even though we admit its cogency, nevertheless it does not follow that merely because the king cannot assert his right within the time limit prescribed for individuals that he should be unlimited. Second, that the sovereign should be protected in spite of the negligence of his public officers.⁷ As was stated

6. *Templeman v. Pugh*, 102 Va. 441.

7. *Levasser v. Washburn*, 59 Va. 572-577.

in a New Hampshire case:

"Experience does not justify the presumption that the community at large will assert their rights with the same promptness with which individuals assert their rights * * * People do not and can not act in a body. Their power must of necessity be exercised thru agents and it cannot be expected that these agents will exercise the same diligence in resisting encroachment on public interest that individuals evince in the protection of their private rights."⁸

If this be a valid objection, and obviously it has force, then its answer is to be found not in the abolition of all bars because of the passage of time, but in placing upon the statute books of this State, laws which will by the penalties and by their proper enforcement compel tax officials to fully perform their duties. This coupled with the invention of proper administrative machinery will answer the objection mentioned.

Third, that legislative acts do not embrace the government or affect its rights unless it be expressly and its terms included or by necessary and unavoidable implication.

This objection being based merely on statutory construction is remediable by the passage of a statute as to taxes at least that is applicable by its express terms to the State.

On the whole, then, it may fairly be said that the reasons underlying the doctrine discussed present no barrier to a statute of limitation for taxes.

In the case of certain crimes, obviously it is wise policy for no lapse of time to prevent their prosecution. So, too, as to ownership of land, but what is the interest of the State as to taxes? Granting the State, being all-powerful, may lawfully demand that taxes be collected without limit of time, the State has an interest more vital than the mere acquisition of revenue. Its primary interest is to encourage commercial development. So long as the average business is in a constant state of bewilderment as to whether it has properly paid taxes for past years, and often through no fault of its own, there can be no exact knowledge as to where it stands. Taxes may not be properly

8. *State v. Franklin Falls Co.*, 49 N. H. 240.

paid because of design, or because of a mistake by negligently failing to be properly advised, or, as is often the case, by the fact that the law is of doubtful construction and no intelligent opinion can be given—and which law may not be interpreted for many years. Such being the case, commercial enterprise should at least not be constantly embarrassed with the question as to whether it is liable for back taxes for 15 years or more—or back to 1902 which number of years increases as the distance from 1902 increases. It would, therefore, seem that some law, whether constitutional or statutory, should be enacted to meet this deplorable situation.

III.

Since it is unwise to collect taxes omitted as far back as 1902, as seems to be required by law, how shall this situation be remedied?

In many other states we find that either by statute or constitutional mandate, provision is made for barring the collection of taxes when omitted for a certain period of time.

Thus, statutes providing that taxes past due for a period of three years or five years are not collectible are to be found in Oregon,⁹ Alabama,¹⁰ Arizona,¹¹ Florida,¹² Louisiana,¹³ Mississippi,¹⁴ Wisconsin,¹⁵ West Virginia,¹⁶ and other states.

Indeed, it seems that the only states which have a constitutional provision similar to the provision in Virginia above quoted are California, Colorado, Illinois, Nebraska, Idaho, Montana, Missouri, Washington and Texas.¹⁷ On the other hand, the Constitution of Louisiana has a provision which bars the

9. Lord's Oregon Laws, §§ 3679, 3729.

10. 1 Alabama Code, 1907, § 2195.

11. Arizona Civil Code, 1913, § 4928.

12. Florida Compiled Laws, § 524.

13. Marr's Revised Statutes of Louisiana, § 6227.

14. Mississippi Code, 1906, § 4742.

15. Wisconsin Statutes, 1913, § 1059.

16. West Virginia Code, 1913, § 994.

17. Stimson, Federal and State Constitutions, p. 269; Index Digest State Constitutions of N. Y. State Constitutional Convention Commission, 1915, pp. 1394, 1419.

collection of taxes three years past due.¹⁸

As typical of the statutes which place a limit on the number of omitted years which may be collected, two are here quoted:

WEST VIRGINIA:

"If the assessor discovered that any taxes on personal property were omitted in any former years, *not exceeding five*, he shall enter the same, with interest thereon, in his personal property book."¹⁹

WISCONSIN:

"Real or personal property omitted from assessment *in any of the three next previous years* unless previously reassessed for the same year or years, shall be entered once additionally for each previous year of such omission, designating each such additional entry as omitted for the year 19—, (giving year of omission) and affixing a just valuation to each entry for a former year as the same should then have been assessed according to his best judgment, and taxes shall be apportioned, and collected on the tax roll for such entry."²⁰

Following out the policy that it is unwise to collect back taxes without limit of time, reinforced as it is by actual enactments in so many other jurisdictions, it would seem advisable if the desired result can be accomplished in no other way, to amend the Constitution of Virginia so as to leave out the requirement preventing the lapse of time since 1902, however great, from being a bar to the collection of state taxes. This would be accomplished either by a constitutional provision leaving it to the Legislature to pass a statute of limitations of three (or five) years duration, or by a provision reading in part that no statute of limitations of less than three (or five) years duration shall run against any claim of the State for taxes. This would still leave the Legislature free to adopt a longer period should it seem advisable.

This is, of course, the most obvious remedy, but is it the only remedy available?

18. Same.

19. West Virginia Code, 1913, § 994.

20. Wisconsin Statutes, 1913, § 1059.

Admittedly, if feasible, it would seem desirable to effectuate this result without the necessity of constitutional amendment. One thing to be noted is the peculiar wording of the constitutional section above quoted in the use of the phrase "statute of limitation." Before any act is violative of this section it must be clearly shown to be a "statute of limitation." It is, therefore, material to ascertain what are statutes of limitation. They "are statutes which prescribe a period within which a right may be enforced, afterward withholding a remedy for reasons of private justice and public policy." If, then, an act were passed baldly providing, similar to section 508 of the Code, as amended, that no state tax "shall be levied or collected on any assessment of intangible personal property, money or incomes for taxes alleged to have been omitted from the assessments for the years prior to 1912," it would therefore seem to be unconstitutional. Yet legislation which empowered the State Tax Board, local boards of review, examiners of records and commissioners of the revenue to assess taxes from 1912 to date might well be held as not being a statute of limitation, and, therefore, not invalid. This still would not limit the right of the Commonwealth to sue should it so desire. Or, if there were no compensation provided by law for these officers for the collection of omitted taxes beyond three (or five) years, their activities would, in all probability, automatically cease.

At best, these are merely suggestions of the vaguest sort. With no less contempt for the tax-dodger, but with more sympathy for the honest person and a desire for the encouragement of business stability, it appears to be advisable to have some limit of time prescribed by constitution or statute beyond which time taxes shall not be collected. Whether any provision should prevent the collection of back taxes where no property has been reported or where there is a wilful evasion is a matter of detail which is not within the purview of this discussion. Every consideration which underlies statutes of limitations applies even in a more marked degree to tax cases. It finds expression in the laws of many of our most progressive states. It would be a forward step for Virginia to follow their lead, and abandon a policy which may well have done when simplicity rather than

complexity was the watch-word in taxation. Given a strong centralized tax administrative machine for the insistence on proper assessments, more equal and uniform, and for full payment on all property, well may we abandon the time-worn policy of digging up the dead taxes. More efficient administrative machinery with the imposition of severe penalties enforced by fearless officers would of necessity cause current returns to more than compensate for omitted tax returns. The intentional tax-dodger, like the perjurer, should be handled through the medium of jail sentences, and not by mere monetary exactions; but he who with every precaution makes what appears to be a correct return is entitled after the lapse of several years to feel secure, even though such return be later found to have been incorrect. Once Virginia adopts such a policy tax dodging will be a lost art; and business fair play a byword.

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